

**ASSEMBLY BILL**

**No. 582**

**Introduced by Assembly Member Matthews**

February 16, 2005

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An act to ~~add Sections 18305 and 20011 to the Elections~~ amend Section 17538.41 of the Business and Professions Code, relating to political advertisements.

LEGISLATIVE COUNSEL'S DIGEST

AB 582, as amended, Matthews. Political advertisements: text messages.

Existing law regulates political advertising by, among other things, requiring paid political advertisements contained in a newspaper to bear a specified disclaimer, prohibiting certain pictures or photos of candidates in campaign materials, and requiring simulated ballots to contain a specified notice.

*Existing law, subject to certain exceptions, generally prohibits a person or entity conducting business in this state from transmitting or causing to be transmitted a text message advertisement to a cellular telephone or pager equipped with short message or a similar capability. Existing law provides that a violation of the provisions regulating advertising is a misdemeanor, and also provides for the imposition of civil penalties and injunctive relief.*

~~This bill would prohibit any candidate or committee from transmitting or causing to be transmitted to any cellular telephone or pager a text message political advertisement, as specified. A violation of this provision would be punishable as a misdemeanor, subject to certain exceptions, generally prohibit a person, entity conducting business, candidate, or political committee in this state from~~

*transmitting, or causing to be transmitted, a text message advertisement, including a political advertisement, to a mobile telephony service handset, a pager, or a 2-way messaging device that is equipped with short message or similar capability.* By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 18305 is added to the Elections Code,~~  
2     ~~to read:~~

3     ~~SECTION 1. Section 17538.41 of the Business and~~  
4     ~~Professions Code is amended to read:~~

5     ~~17538.41. (a) (1) Except as provided in subdivision (b), (c),~~  
6     ~~or (d), no person or, entity conducting business, candidate, or~~  
7     ~~political committee in this state shall transmit, or cause to be~~  
8     ~~transmitted, a text message advertisement to a cellular telephone~~  
9     ~~or mobile telephony services handset, pager, or two-way~~  
10    ~~messaging device that is equipped with short message capability~~  
11    ~~or any similar capability allowing the transmission of text~~  
12    ~~messages. A text message advertisement is a message, the~~  
13    ~~principal purpose of which is to promote the sale of goods or~~  
14    ~~services, or to promote a political purpose or objective, to the~~  
15    ~~recipient, and consisting of advertising material for the lease,~~  
16    ~~sale, rental, gift offer, or other disposition of any realty, goods,~~  
17    ~~services, or extension of credit, or advertising material for~~  
18    ~~political purposes.~~

19    ~~(2) This section shall apply when a text message~~  
20    ~~advertisement is transmitted to a telephone number assigned for~~  
21    ~~cellular telephone or mobile telephony service, pager service, or~~  
22    ~~two-way messaging service to a California resident.~~

23    ~~(b) This section shall not apply to text messages transmitted at~~  
24    ~~the direction of a person or entity offering cellular telephone or~~

1 *mobile telephony service, pager service, or two-way messaging*  
2 *service* if the subscriber is offered an option to not receive those  
3 text messages.

4 (c) This section shall not apply to text messages transmitted by  
5 a business that has an existing relationship with the subscriber if  
6 the subscriber is offered an option not to receive text messages  
7 from that business.

8 (d) This section shall not apply to text messages transmitted by  
9 an affiliate of a business that has an existing relationship with the  
10 subscriber, but only if the subscriber has provided consent to the  
11 business with which he or she has that relationship to receive text  
12 messages from affiliates of that business. "Affiliate" means any  
13 company that controls, is controlled by, or is under common  
14 control with, another company.

15 (e) Subdivision (a) shall not impose an obligation on a person  
16 or entity offering ~~cellular or mobile telephony service, pager~~  
17 ~~service, or two-way messaging service~~ to control the transmission  
18 of a text message unless the message is transmitted at the  
19 direction of that person or entity.

20 (f) *For purposes of this section, "mobile telephony service"*  
21 *means commercially available interconnected mobile phone*  
22 *services that provide access to the public switched telephone*  
23 *network (PSTN) via mobile communication devices employing*  
24 *radiowave technology to transmit calls, including cellular*  
25 *radiotelephone, broadband Personal Communications Services*  
26 *(PCS), and digital Specialized Mobile Radio (SMR).*

27 ~~18305. Any person who violates Section 20011 is guilty of a~~  
28 ~~misdemeanor.~~

29 ~~17538.41. (a) (1) Except as provided in subdivision (b), (c),~~  
30 ~~or (d), no person or entity conducting business in this state shall~~  
31 ~~transmit or cause to be transmitted a text message advertisement~~  
32 ~~to a cellular telephone or pager equipped with short message~~  
33 ~~capability or any similar capability allowing the transmission of~~  
34 ~~text messages. A text message advertisement is a message, the~~  
35 ~~principal purpose of which is to promote the sale of goods or~~  
36 ~~services to the recipient, consisting of advertising material for the~~  
37 ~~lease, sale, rental, gift offer, or other disposition of any realty,~~  
38 ~~goods, services, or extension of credit.~~

~~(2) This section shall apply when a text message advertisement is transmitted to a telephone number assigned for cellular telephone or pager service to a California resident.~~

~~(b) This section shall not apply to text messages transmitted at the direction of a person or entity offering cellular telephone or pager service if the subscriber is offered an option to not receive those text messages.~~

~~(c) This section shall not apply to text messages transmitted by a business that has an existing relationship with the subscriber if the subscriber is offered an option not to receive text messages from that business.~~

~~(d) This section shall not apply to text messages transmitted by an affiliate of a business that has an existing relationship with the subscriber, but only if the subscriber has provided consent to the business with which he or she has that relationship to receive text messages from affiliates of that business. "Affiliate" means any company that controls, is controlled by, or is under common control with, another company.~~

~~(e) Subdivision (a) shall not impose an obligation on a person or entity offering cellular or pager service to control the transmission of a text message unless the message is transmitted at the direction of that person or entity.~~

~~SEC. 2. Section 20011 is added to the Elections Code, to read:~~

~~20011. (a) (1) A candidate or committee shall not transmit or cause to be transmitted to a cellular telephone or pager a text message political advertisement, the purpose of which is to support or oppose any candidate or ballot measure.~~

~~(2) This section shall apply when a text message political advertisement is transmitted to a telephone number assigned for cellular telephone or pager service to a California resident.~~

~~(b) Subdivision (a) shall not impose any obligation on a person or entity offering cellular telephone or pager service to control or prevent the transmission of a text message political advertisement unless that message is transmitted at the direction of that person or entity.~~

~~(d) The provisions of this section are in addition to, and do not supplant or supersede, the provisions of Section 17538.41 of the Business and Professions Code.~~

~~SEC. 3.~~

*SEC. 2.* No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

**CORRECTIONS:**

**Text— Pages 1 and 2.**

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